

**AMENDMENTS TO THE CLAIMS**

This listing of claims will replace all prior versions and listings of claims in the application:

1. **(CURRENTLY AMENDED)** A semiconductor device comprising:

a substrate having a semiconductor layer and a trench, said semiconductor layer being an epitaxial layer, said trench partitioning said semiconductor layer into a plurality of regions;

an element isolating insulating film provided in the trench for partitioning said semiconductor layer into ~~a plurality of~~ an element regions region, the element isolating insulating film ~~being formed on said substrate so as to penetrate said semiconductor layer and~~ having a top surface projecting upward above a surface of said semiconductor layer; and

[[A]] a MOS type element formed within a corresponding one of the element regions and having a gate insulating film, wherein:

a difference in height from the substrate between the top surface position of said element isolating insulating film and the top surface position of said semiconductor layer is at least three times as large as the thickness of said gate insulating film.

2. **(CURRENTLY AMENDED)** A semiconductor device comprising:

a substrate having a semiconductor layer and a trench, said semiconductor layer being an epitaxial layer, said trench partitioning said semiconductor layer into a plurality of regions;

an element isolating insulating film provided in the trench for partitioning said semiconductor layer into ~~a plurality of~~ an element regions region, the element isolating insulating film ~~being formed on said substrate so as to penetrate said semiconductor layer and~~ having a top surface projecting upward above a surface of the semiconductor layer; and

[[A]] a MOS type element formed within a corresponding one of said element regions, wherein:

a difference in height from the substrate between the top surface position of the semiconductor layer and the top surface position of the element isolating insulating film is at least 10 nm.

3. **(CURRENTLY AMENDED)** A semiconductor device comprising:

a substrate having a semiconductor layer and a trench, said semiconductor layer being an epitaxial layer, said trench partitioning said semiconductor layer into a plurality of regions;

an element isolating insulating film provided in the trench for partitioning said semiconductor layer into ~~a plurality of an element regions~~ region, the element isolating insulating film ~~being formed on said substrate so as to penetrate said semiconductor layer and~~ having a top surface projecting upward above a surface of the semiconductor layer; and

[[A]] a MOS type element formed within ~~a corresponding one of said element regions~~ region and having a gate insulating film and a metal gate electrode formed thereon, wherein:

said gate insulating film and said metal gate electrode are formed on a top surface and sides of the semiconductor layer in said element region which are not covered with said element isolating insulating film.

4. **(ORIGINAL)** A semiconductor device according to claim 3, wherein the difference in height from said substrate between the top surface position of said semiconductor layer and the top surface position of said element isolating insulating film is at least five times as large as a thickness of said gate insulating film.

5. **(ORIGINAL)** A semiconductor device according to claim 3, wherein the MOS element includes a source/drain region and the difference in height from said substrate between the top surface position of said semiconductor layer and the top surface position of said element isolating insulating film is substantially at least a junction depth of said source/drain region.

6.-33. **CANCELED**

34. **(NEW)** A semiconductor device according to claim 3, wherein said element isolating insulating film and said gate insulating film are formed in different steps.

35. **(NEW)** A semiconductor device according to claim 1, wherein said element isolating insulating film is a thermally grown oxide film, and said element isolating insulating film and said element region make an interface which is substantially perpendicular to a top surface of said semiconductor layer.

36. **(NEW)** A semiconductor device according to claim 2, wherein said element isolating insulating film is a thermally grown oxide film, and said element isolating insulating film and said element region make an interface which is substantially perpendicular to a top surface of said semiconductor layer.

37. **(NEW)** A semiconductor device according to claim 3, wherein said element isolating insulating film is a thermally grown oxide film, and said element isolating insulating film and said element region make an interface which is substantially perpendicular to a top surface of said semiconductor layer.

38. **(NEW)** A semiconductor device according to claim 1, further comprising a metal gate electrode formed on the gate insulating film, said gate insulating film and said metal gate electrode being formed on a top surface and sides of the semiconductor layer in said element region which are not covered with said element isolating insulating film.

39. (NEW) A semiconductor device according to claim 2, further comprising a metal gate electrode formed on the gate insulating film, said gate insulating film and said metal gate electrode being formed on a top surface and sides of the semiconductor layer in said element region which are not covered with said element isolating insulating film.